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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,212	01/24/2002	Nico N. Raczek	01/016 NUT	1719
7590		12/04/2003	EXAMINER	
PROPAT, L.L.C.		SAYALA, CHHAYA D		
2912 CROSBY ROAD		ART UNIT		
CHARLOTTE, NC 28211-2815		PAPER NUMBER		
		1761		
DATE MAILED: 12/04/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,212

Applicant(s)

RACZEK, NICO N.

Examiner

C. SAYALA

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 2-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Parentheses in claims are indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by HU 59290.

The patent teaches the same amount of sorbic acid for fodder for pigs. The growth stabilizing property is inherent.

4. Claim 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by over Bolduan et al (Arch. Tierz # 40 , pages 95-100, 1997)

The abstract teaches feeding piglets acidic acid as an additive in basic feed.

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Ueno et al. (US Patent 4444796)

Feedstuffs with ascorbic acid in an amount of 0.1 – 0.7%. The sorbic acid is growth stabilizing. See the claims, col. 2, lines 55-60.

6. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Freitag et al. (Feed Magazine, 2/99, pages 49-57)

The reference teaches feeding pigs sorbic acid was advantageous. See page 54.

7. Claims 1-2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Roth et al. (J. Animal and Feed Sci., pp. 25-33, 1998).

Sorbic acid is shown to be beneficial when fed to pigs. See abstract, and page 27.

8. Claims 1-2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Kirchgessner et al. (J. Animal Physio. & Animal Nutrition, pp. 235-242, 1995)

Sorbic acid is shown to be beneficial when fed to pigs. Note the amounts shown.

9. Claims 1-2 and 7 are rejected as being anticipated by Dilworth et al. (Poultry Sci., pp. 1445-1450, 1979)

Dilworth et al. teach that 0.04% sorbic acid in poultry feed provided benefits outlined in the abstract.

10. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 98/20749.

The invention is to using sorbic acid in the amounts shown at claim 9, in feeds of pigs and other livestock shown at page 6, lines 33-35.

11. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 3704175.

The abstract teaches the use of sorbic acid in the same amounts as a preservative (growth-stabilizing) in herbivorous and omnivorous animal feeds, which would inherently include all the animals claimed.

12. Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 275958 (which is an equivalent of DE 3701567—see PTO form 1449).

The disclosure teaches consuming feedstuff by adding 0.5 – 5.0 wt percent sorbic acid for hens, cattle and pigs.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1 and 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2403203.

The DE 2403203 teaches sorbic acid in animal feed. It would have been obvious to one of ordinary skill in the art that even though the patent does not teach all the various animals named in instant claims 4-8, the disclosure would have included them, because it was known in the art to feed such animals spent waste of brewer's grains.

14. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO98/20749.

The patent is as discussed above. The patent teaches various animals except rabbit rearing. Given the variety of animals shown at page 6, lines 30-35, including goats and chicken, it would have been obvious to one of ordinary skill in the art to include sorbic acid in the feed of rabbits also as a nutritive preparation.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA at Group 1761, telephone number (703) 308-3035.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-0661.


C. SAYALA
Primary Examiner
Group 1700.